NO. 83-1658

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

JAMES F. McMANUS,

Petitioner,

—against—

THE VILLAGE OF SOUTHAMPTON, NEW YORK, and THE TOWN OF SOUTHAMPTON, NEW YORK,

Respondents,

DONALD FANNING and JAMES CHISM,

Defendants.

BRIEF IN OPPOSITION TO WRIT OF CERTIORARI

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Statement of Facts

The Petitioner commenced this proceeding in the District Court for the Eastern District of New York contending that jurisdiction existed based upon 42 USC Sections 1983 and 1988, Fourth, Fifth, Sixth and Fourteenth Amendments to the Constitution, and 28 USC Sections 1331, 1332

and 1343. Diversity jurisdiction being lacking, the serious basis for the retention of the action in the Federal Court system was premised upon 42 USC Section 1983. The District Court determined that jurisdiction against the Town and the Village could not, under the allegations of the complaint, be sustained upon that statute and dismissed the action as to the Town and the Village. That determination was sustained by the Second Circuit.

Factually, the Petitioner alleges in his complaint that on July 2, 1980 Fanning was acting in a "triple capacity". First, it is alleged, that he was acting as a private citizen, thus indicating that he had no relationship in this capacity with either the Village or the Town. Secondly, it is alleged that he was acting as an employee of the Village of Southampton, to wit, as a truck driver for the Department of Public Works. Thirdly, it is alleged that Fanning, at the time, was acting as a police officer for the Town of Southampton.

Acting in one of the above capacities, Fanning summoned the Village Police for assistance in the arrest of the Petitioner. At this point, Fanning arrested the Petitioner charging him with harassment, a violation of Section 240:25 of the New York State Penal Law and, also, with a traffic violation.

The Petitioner was handcuffed, the handcuffs allegedly causing pain, abrasions and contusions. He was taken to the Police Station and detained for a number of hours and released. These facts gave rise to the first cause of action alleged in the complaint, to wit, unconstitutional arrest or false imprisonment.

The complaint, although inartful, alleged in the second count damages because of negligence in the way the handcuffs were applied.

The third count sought damages for malicious prosecution.

Insofar as the Town and Village are concerned, the complaint is devoid of any allegation as to their fault other than the claim that defendants Chism and Fanning were employees of the municipal corporate defendants. Further, upon the motion to dismiss by the Village, Petitioner suggested no other theory, although otherwise expanding upon his complaint, as duly noted in the order of Judge Pratt dated February 4, 1982 (B1-B3).

The District Court dismissed the action as to the Town and the Village. Thereafter by stipulation pursuant to 28 USC Section 636 the parties stipulated to try the case before Magistrate Jordan. It was so tried with there being a jury verdict in favor of the defendant Chism and against the defendant Fanning and in favor of the Petitioner for the total sum of $500.00. An appeal was filed by the Petitioner. The appeal with respect to the defendants Fanning and Chism was, according to stipulation, to be taken to the District Court. The Petitioner has not perfected this appeal within the time limits provided by Rule 14 of the Rules Governing Magistrate's Proceedings in the Eastern District of New York and, presumptively, has abandoned that appeal.

The appeal from the orders dismissing the action as to the Town and Village was perfected to the Second Circuit, which Court affirmed the dismissal.

At this point, the Petitioner seeks to have this Court review the propriety of the dismissal of the action as against the Town and the Village.

POINT I

No basis for jurisdiction is alleged as against the Village.

The District Court afforded the Petitioner the opportunity to explain the nature of his causes of action incorporating that explanation as a part of his order and decision dated February 4, 1982 (B-2). At the same time the Court noted that the plaintiff did not allege any theory of liability against the Village other than on the basis of respondeat superior. Such allegations are not sufficient to impose liability or jurisdiction under 42 USC Section 1983. *Monell* v. *New York City Department of Social Services,* 436 U.S. 658 and *Owens* v. *Haas,* 601 F. 2d 1242, cert. den. 444 U.S. 980; and *Battista* v. *Rodriguez,* 702 F. 2d 393. The Courts below were, clearly, correct when they held that there was no jurisdiction under the Civil Rights allegations.

POINT II

The District Court, in the exercise of its discretion, properly declined to retain State law claims under the Doctrine of Pendent Jurisdiction.

Petitioner complained in his complaint regarding the actions of Fanning and Chism. With respect to Fanning, the complaint alleged that he was acting either in his individual capacity, in his capacity as a truck driver of the Village of Southampton or in his capacity as a part time police officer of the Town of Southampton. The jury awarded the Petitioner the sum of $500.00 for the alleged wrongful acts. Since that portion of the judgment stands, the potential liability of the Village, if Fanning's acts were done in the scope of his employment to the Village, would

be the sum of $500.00. With respect to Chism, who received a verdict, there is no liability and, hence, nothing that can effect the Village.

The District Court, in the exercise of discretion, declined to exercise pendent jurisdiction over the Village and such determination was not inappropriate. *United Mine Workers* v. *Gibbs,* 383 U.S. 715 and *Moor* v. *County of Alameda,* 411 U.S. 693. Particularly, under the facts of this case, it was proper for the District Court, in the exercise of its discretion, to decline to exercise any pendent jurisdiction, presuming that such existed. *Nelson* v. *Meyer,* 520 F. 2d 1276, cert. den. 423 U.S. 1034. Clearly there is no independent Federal jurisdiction against the municipal defendants since diversity does not exist. Since the Civil Rights allegations are insufficient as a matter of law, it would not seem that pendent jurisdiction is available. *Aldinger* v. *Howard,* 427 U.S. 1.

CONCLUSION

This Court should not grant the writ.

Respectfully submitted,

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